

Appl. No. 09/824,454
Reply Dated May 12, 2004
Reply to Office Action of Feb. 20, 2004

REMARKS

Claims 1-5 are pending in the present application and stand rejected. Claims 1-5 have been rejected.

Claim 1 has been amended to recite a preferred embodiment. Support for this amendment is found on page 5, line 15-21.

Claim 8 is new. Support for this new claim may be found in claim 6 as originally filed and in the disclosure on page 6, lines 13-14.

No new matter is believed to have been added. As such, entry is respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Applicant respectfully submits that the Office has failed to make a *prima facie* case for the obviousness rejections presented below. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. *See In re Fritch*, 972 F.2d 1260 (Fed. Cir. 1992); MPEP § 2143.01. Second, there must be a reasonable expectation of success. *In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991); MPEP § 2143.02. Third, the prior art reference or combined references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981 (CCPA 1974); MPEP § 2143.03. Furthermore, in establishing a *prima facie* case of obviousness, case law clearly places the "burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967).

Claims 1-5 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,883,026 to Reader et al. (hereafter "Reader") in view of U.S. Pat. No. 5,804,512 to Lickfield et al. (hereafter "Lickfield"). In support of this rejection, the Office states that "Reader teaches bonding the layers together but fails to teach bonding without an adhesive at discrete bond sites." The Office adds that "Lickfield teaches bonding the layers together by several different methods including adhesive and thermal bonds." The Office concludes that "[i]t would have been obvious to a person having ordinary skill in the art to utilize Lickfield's bonding method in the laminate of Reader." Applicant traverses this rejection.

Reader discloses a face mask comprising one or more layers of a nonwoven air permeable material with at least one layer being a spunbonded/meltblown/spunbonded (SMS) laminate. Col. 3, lines 5-8. Reader, in a preferred embodiment and as claimed, discloses a face mask comprising three layers: an outermost SMS layer, an intermediate electret meltblown layer, and an inner nonwoven fabric layer. Col. 3, lines 14-21. However, Reader fails to disclose bonding without an adhesive. Lickfield discloses a nonwoven laminate fabric comprising two outer plies comprising spunbonded web and an inner ply comprising a meltblown web. Col. 3, line 55 to Col. 4, line 45. Lickfield discloses that the nonwoven laminate fabric can be bonded together by techniques known in the art,

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preferably be using a multiplicity of discrete thermal bonds. Col. 4, lines 59-67. Assuming *arguendo*, the hypothetical combination of Reader and Lickfield at best could yield the three layer laminate of Reader with the discrete thermal bonds of Lickfield. This combination, however, does not result in Applicant's invention

Applicant submits that the invention as now claimed is not made obvious by the combination of cited references. As amended, Applicant's Claim 1 recites that the first fibrous outer layer and the second fibrous outer layer are carded. Reader teaches away from Applicant's amended claim. Case law states that a "reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). Reader teaches a face mask comprising a SMS laminate. The disclosure of Reader teaches that the SMS layer is the outermost layer if laminated with other fabric layers such as electret meltblown fabrics or nonwovens. Col. 2, lines 11-19; Col. 3, lines 7-25, and Examples starting in Col. 9, line 44. Reader's teaching that the outermost layer is an SMS layer contradictory to Applicant's use of a carded fibrous outer layers. Likewise, Reader fails to teach all of Applicant's claim limitation since Reader does not teach the use of carded fibers for the outermost layers of the laminate.

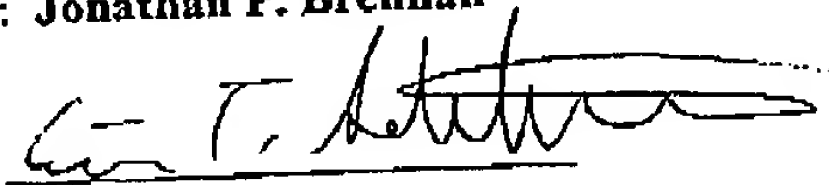
Claims 2-5 are dependent from and contain all limitations of Claim 1. Therefore, since Claim 1 is nonobvious, Claims 2-5 are likewise nonobvious. See *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) ("Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.").

CONCLUSION

All rejections in the Office Action have been addressed. Based on the foregoing reasons, Applicant respectfully requests reconsideration and withdrawal of the rejections. Allowance of each of the pending claims in the next Office Action is requested.

Respectfully Submitted,

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